ST 99-0284-GIL 09/22/1999 BULK SALES

> Special procedures exist for the successor to minimize exposure from the predecessor. These procedures are described in subparts (a)(4) and (b) of 86 Ill. Adm. Code 130.1701. The notice of sale/purchase of business assets must be reported to the Department on Form NUC-542A no later than 10 days after the sale or transfer. (This is a GIL).

September 22, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 27, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

> In an arm's length transaction, COMPANY, a limited partnership, would obtain the entire assets of a propane division of a diversified company. COMPANY would pay for the assets with cash and the issuance of publicly traded partnership units. In other words, COMPANY would buy some of the assets outright and the remaining assets would be a contribution of assets for a partnership interest on the part of the seller.
>
> Under the 1986 Internal Revenue Code, as amended, this transaction would come under the disguised sale rules of Internal Revenue Code Section 707.
>
> Our question is this: Does this transaction qualify for any type of occasional sale exemption? Part of this transaction is a transfer of property to a partnership in exchange for a partnership interest and part of this transaction could be considered a liquidation of a trade or business. (The seller will continue in business, but will no longer have its propane division.) Is this transaction subject to sale or use tax?
>
> We are asking for an answers to these issues not in an effort to evade tax; rather, we want to make certain that we are in full compliance with the law.
>
> If you have any questions, or would like to discuss this matter personally, please contact the undersigned at ####.
>
> Thank you for your attention to this matter.
>
> If you have any questions, please contact the undersigned at ####.

When a business sells its inventory, the sales must be treated as any other retail sales made by the business during its operation. If the sale is made to a purchaser for use or consumption, the sale is a taxable retail sale. If the sale is for resale to another retailer, then the purchaser must give a valid Certificate of Resale in order for the sale to be free from tax. See 86 Ill. Adm. Code 130.1405, enclosed. Unless a valid exemption is documented, the business selling its inventory will be liable for tax on such sales.

Where a business is selling fixed assets that it is not otherwise engaged in the business of retailing, such as furniture, fixtures, or machinery, the sale may be considered an isolated or occasional sale. If this is the case, there is no Retailers' Occupation Tax liability on such a sale. See 86 Ill. Adm. Code 130.110, enclosed.

Successor liability provisions in the Illinois Retailers' Occupation Tax are set out at 86 Ill. Adm. Code 130.1701, a copy of which is enclosed.

This regulation states that:

> "If any taxpayer, outside the usual course of his business, sells or transfers the major part of any one or more of
>
> (1) the stock of goods which he is engaged in the business of selling, or
>
> (2) the furniture or fixtures, or
>
> (3) the machinery and equipment,
>
> (4) the real property of any business that is subject to the provisions of the Act, the purchaser or transferee of such assets shall, no later than 10 days after the sale or transfer, file a notice of sale or transfer of business assets with the Chicago office of the Department...."

These are the circumstances under which notice of the sale must be given to the Department pursuant to the Retailers' Occupation Tax Act. To the extent that the taxpayer is a retailer, he or she will have to comply with requirements under the Retailers' Occupation Tax Act.

Special procedures exist for the successor to minimize exposure from the predecessor. These procedures are described in subparts (a)(4) and (b) of 86 Ill. Adm. Code 130.1701. The notice of sale/purchase of business assets must be reported to the Department on Form NUC-542A no later than 10 days after the sale or transfer. This form must be filed at our Chicago office. The form must contain the following information:

(1) the name and address of the purchaser or transferee;

(2) the date of the sale or transfer;

(3) a copy of the sales contract and financing agreements which shall include a description of the property sold;

(4) the amount of the purchase price or a statement of other consideration for the sale or transfer;

(5) the terms for payment of the purchase price; and

(6) such other information as the Department may reasonably require.

This form can be obtained from the Bulk Sales Unit of our Chicago office by calling 312-814-3210. If we determine that the seller owes tax, an order to withhold a portion of the purchase price is issued within 10 days after receipt of the notice.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.